

NO. WR, 56-380-01  
WRIT NO. W99-02290-I(A)

EX PARTE	§	IN THE COURT OF CRIMINAL
	§	
	§	APPEALS FOR THE
	§	
ANDREW WAYNE ROARK	§	STATE OF TEXAS

**APPLICANT'S REQUEST FOR THE COURT  
TO RECONSIDER CASE ON ITS OWN MOTION**

**TO THE HONORABLE JUDGES OF SAID COURT:**

NOW COMES Applicant, ANDREW WAYNE ROARK, and submits this request that the Court reconsider this case on its own motion and would show the following:

I.

On January 25, 2006, the Court denied the relief requested in this Application for Writ of Habeas Corpus.

II.

On January 23, 2006, by express mail, Applicant sent to the Court the document attached to this request entitled, "Supplemental Material In Support of Request For Remand for Consideration of New Evidence." It appears that this material was not before the Court at the time the decision was rendered. This material is highly significant. Applicant requests that the Court review this material, in conjunction with everything else submitted in this case, in order to determine whether the Court should reconsider this case on its own motion.

WHEREFORE, PREMISES CONSIDERED, Applicant submits this request.

Respectfully submitted,



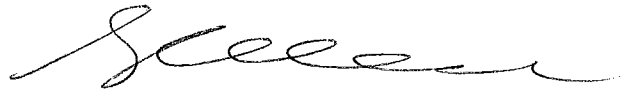
GARY A. UDASHEN  
Bar Card No. 20369590

SORRELS & UDASHEN  
2301 Cedar Springs Road  
Suite 400  
Dallas, Texas 75201  
214-468-8100  
214-468-8104 fax

Attorney for Applicant

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that a true and correct copy of Applicant's Request to the Court to Reconsider Case On Its Own Motion was delivered to the District Attorney's Office, 133 N. Industrial Blvd., Dallas, Texas 75207, on this the 14 day of February, 2006.



GARY A. UDASHEN



NO. WR, 56-380-01  
WRIT NO. W99-02290-I(A)

EX PARTE	§	IN THE COURT OF CRIMINAL
	§	
	§	APPEALS FOR THE
	§	
ANDREW WAYNE ROARK	§	STATE OF TEXAS

SUPPLEMENTAL MATERIAL IN SUPPORT OF  
REQUEST FOR REMAND FOR  
CONSIDERATION OF NEW EVIDENCE

TO THE HONORABLE JUDGES OF SAID COURT:

NOW COMES Applicant, ANDREW WAYNE ROARK, and submits this supplemental material in support of request for consideration of new evidence and would show the following:

I.

The evidence in Mr. Roark's case showed that the child had old blood and new blood on her brain that was revealed in a review of her catscan. However, the state's doctors and the prosecutors trying the case took the position that this was not significant, did not undermine the shaken baby theory and did not mean that the injury did not necessarily occur during the limited time period that Mr. Roark was the sole caretaker for the child. However, in the recent motion for new trial hearing in *State of Texas v. Maria Isabel Hurtado*, No. F04-49745-L in the Criminal District Court No. 5 of Dallas County, Texas, the state's expert doctor took a different position. The Hurtado case was a similar "shaken baby" case.

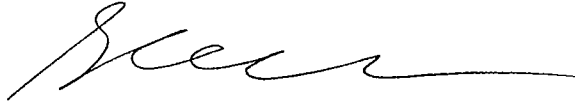
In the Hurtado case, there was a dispute between two radiologists as to whether the child's catscan showed both old blood and new blood. The state's position, expressed through their witnesses and argument, was that there was only new blood. During the motion for new trial testimony of Dr. Matthew Cox, the state's expert witness, a different position was taken. Dr. Cox admitted that the presence of old blood would, in theory, mean that the state's argument that the injury to the child in the Hurtado case was caused by shaking was incorrect. (See attached record excerpts from Hurtado). The facts in Hurtado and those in the Roark case are the same, an allegation of injury to a child under the Shaken Baby Syndrome theory. Dr. Cox's testimony is important because he is currently the Director of the Referral and Evaluation of At Risk Children Program at Children's Medical Center. This is the primary program in Dallas County dealing with medical child abuse cases. (See attached record excerpts from Hurtado trial). Dr. Cox was the state's primary expert at the Hurtado trial. The position he now holds was previously held by Dr. Janet Squires who was the state's primary expert in the Roark trial. (See RR 5, p. 45, Roark trial record). The fact that Dr. Cox is giving testimony that could have undermined the state's case in the Roark trial is highly significant based on his position.

## II.

As stated in previous filings in this case, the area of "Shaken Baby Syndrome" is constantly evolving. New scientific studies are adding to the scientific understanding of this very complex question and raising new questions concerning the validity of this theory of

prosecution. Based upon this new information, Mr. Roark requests the court to remand this case back to the trial court for further evidence gathering. This is necessary in order to ensure that justice is served.

Respectfully submitted,



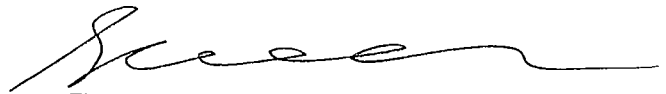
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Suite 400  
Dallas, Texas 75201  
214-468-8100  
214-468-8104 fax

Attorney for Applicant

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that a true and correct copy of Supplemental Material in Support of Request for Remand for Consideration of New Evidence was mailed to the District Attorney's Office, 133 N. Industrial Blvd., Dallas, Texas 75207, on this the 23 day of January, 2006.



GARY A. UDASHEN

ORIGINAL

1

1 IN THE CRIMINAL DISTRICT COURT NUMBER 5  
2 OF DALLAS COUNTY, TEXAS

3 THE STATE OF TEXAS \*  
4 vs. \* CAUSE NO. F04-49745-L  
5 MARIA ISABEL HURTADO \*  
6  
7  
8

9 TRIAL on the MERITS

10 Volume 3 of 5 Volume(s)  
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18 BE IT REMEMBERED THAT on this the 30th day of  
19 September, A.D, 2005, the above-styled and -numbered  
20 cause(s) came on for hearing before the Honorable Manny  
21 Alvarez, Judge Presiding, with a jury, in the Criminal  
22 District Court Number 5 of Dallas County, State of Texas,  
23 and the following is a true and correct transcription of the  
24 proceedings had, to-wit:

25 (Proceedings Reported by Computerized Machine Shorthand)

September 30, 2005 - Volume 3

1 that's a very good animation, personally.

2 THE COURT: Okay. Give me a minute.

3 (Brief pause in proceedings.)

4 THE COURT: Okay. Let's bring 'em in.

5 THE BAILIFF: All rise, please.

6 (Members of the Jury enter the courtroom.)

7 THE COURT: Be seated, please.

8 Ladies and Gentlemen of the Jury, this  
9 witness has been sworn.

10 You may proceed.

11 MATTHEW COX, M.D.,

12 the witness hereinbefore named, having been duly sworn by  
13 the Court, testifies under oath as follows:

14 DIRECT EXAMINATION - CONTINUED

15 BY MS. PEIRCE:

16 Q. Dr. Cox, will you please state your full name for  
17 the record.

18 A. Doctor Matthew Cox. C-o-x (spelling).

19 Q. And did you begin your testimony yesterday?

20 A. Briefly, yes.

21 Q. Do you understand, you're still under oath?

22 A. Yes.

23 Q. I'm not exactly sure where we left off, so let me  
24 start over again. What is your position that you hold  
25 currently?



September 30, 2005 - Volume 3

1 A. I'm employed at the University of Texas  
2 Southwestern Medical School. I work primarily at Children's  
3 Medical Center Dallas.

4 My main obligation or role at Children's Medical Center  
5 is I'm co-director of the Reach Program, which is the  
6 referral and evaluation of at-risk children.

7 We see children both in the hospital, as well as the  
8 clinic, when there are concerns of physical or sexual abuse  
9 or neglect, and provide a medical evaluation.

10 I'm also a general pediatrician, seeing kids in the  
11 hospital, when they're hospitalized, for a variety of  
12 illnesses, about 20, 25 percent of my time.

13 Q. Do you have a particular specialty?

14 A. I am, first and foremost, a general pediatrician.  
15 But I also have added training and expertise in the area of  
16 child abuse and neglect evaluations, having done additional  
17 training for two years at Children's Hospital Philadelphia  
18 in that area.

19 Q. Is that a recognized specialty, like, neurology or  
20 pediatrics, those types?

21 A. It's a new area of focus in pediatric medicine.  
22 So it's not officially recognized as a true subspecialty of  
23 pediatrics at this time. But, in the near future, it will  
24 be.

25 Q. Who actually would have to make it a specialty?

September 30, 2005

1 THE STATE of TEXAS )

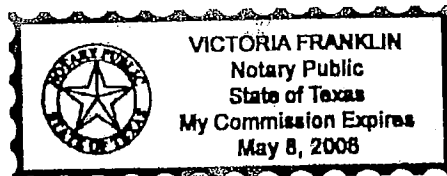
2 COUNTY of DALLAS )

3 I, VICTORIA FRANKLIN, Official Court Reporter in and  
4 for Criminal District Court Number 5 of Dallas County, State  
5 of Texas, do hereby certify that the following exhibits  
6 constitute true and complete duplicates of the original  
7 exhibits, excluding physical evidence, offered into evidence  
8 during the proceedings in the above-entitled and -numbered  
9 cause(s), as set out herein before the Honorable Manny  
10 Alvarez, Judge of Criminal District Court Number 5 of Dallas  
11 County, State of Texas, and the proceedings beginning  
12 September 30, 2005.

13 I further certify that the total cost for the  
14 preparation of this Reporter's Record is \$ 835.00 and was  
15 paid/will be paid by Dallas County.

16 WITNESS MY OFFICIAL HAND this the 8<sup>th</sup> day of

17 November, A.D., 2005.



23  
24  
25

*V. Franklin*  
VICTORIA FRANKLIN, CSR #2307  
Official Court Reporter  
133 N. Industrial Blvd., LB-42  
Dallas County, Texas 75207  
Office: 214-653-5943  
Fax: 214-761-1388

My License Expires: 12-31-05  
Commission Expires: 05-08-06

\* \* \* \* \*

*Victoria Franklin, Official Court Reporter*  
214.653.5943

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REPORTER'S RECORD  
VOLUME 1 of 1  
TRIAL COURT CAUSE NO. F04-49745-L

THE STATE OF TEXAS	CRIMINAL DISTRICT
VS.	COURT NUMBER FIVE
MARIA ISABEL HURTADO	DALLAS COUNTY, TEXAS

**ORIGINAL**

MOTION FOR NEW TRIAL

On the 19th day of December 2005, the following proceedings came on for hearing in the above-entitled and numbered cause before the Honorable Pat Priest, sitting for the Honorable John Ovard held in Dallas, Dallas County, Texas:

Proceedings reported by oral stenography.

1 MS. HOGUE: The State will call Dr. Cox.

2 THE COURT: Sir, please have a seat and  
3 then raise your right hand.

4 [Witness sworn.]

5 THE COURT: The Rule has been invoked,  
6 sir. And that simply means you can't be in the courtroom  
7 when another witness testifies, nor discuss your own  
8 testimony with anyone other than the lawyers until the  
9 hearing is concluded.

10 You may proceed.

11 MATTHEW COX, M.D.,  
12 having been first duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MS. HOGUE:

15 Q. Sir, will you please state your full name?

16 A. Dr. Matthew Cox.

17 Q. And, Dr. Cox, are you the same Matthew Cox that  
18 testified both before the judge in a hearing outside the  
19 presence of the jury, as well as in front of the jury, in  
20 *The State versus Maria Isabel Hurtado* that was tried back  
21 in September of 2005?

22 A. Yes.

23 Q. And are your qualifications and your  
24 credentials the same as they were back then?

25 A. Yes.

1 records as he documented it. So, I don't think that  
2 would have changed anything.

3 Q. Well, would it have been helpful in the sense  
4 of being thorough to speak to that doctor?

5 A. I don't think, in this case, I would have. I  
6 don't agree with that.

7 Q. Okay. Now, Dr. Uscinski apparently agrees with  
8 the doctors at Baylor, correct?

9 A. That's my understanding, yes.

10 Q. And I think, if I understand you correctly,  
11 that you said the most important question really is  
12 whether or not there was prior bleeding based upon the --  
13 And that's the difference between the doctors' view of  
14 these radiology readings; is that correct?

15 A. It is an important question, yes.

16 Q. And if, in fact, the doctors from Baylor were  
17 correct, --

18 A. Uh-huh.

19 Q. -- and Dr. Uscinski is correct, then the theory  
20 that you have proposed as to what caused the injury to  
21 this child would be incorrect.

22 A. In theory, yes.

23 Q. Okay. So, you would agree that if Dr. Uscinski  
24 came into court and he gave testimony as is in his  
25 affidavit and he pointed to the Baylor Hospital record

1 and said, "These doctors were correct," and if the jury  
2 believed that, then they would have rejected your theory.

3 A. I imagine so, yes.

4 MS. HOGUE: And I object. Calls for  
5 speculation.

6 THE COURT: Overruled.

7 Q. [By Mr. G. Udashen] Now, so, the age of the  
8 injuries is the most important question in determining  
9 the shaken baby analysis.

10 A. Most important, I don't know, but it's one of  
11 the questions I always ask, yes.

12 Q. Now, you are aware, I'm sure, from your work in  
13 this field that Dr. Uscinski is certainly not the only  
14 expert in the country or, in fact, in the world that  
15 would disagree with your analysis of these types of  
16 cases.

17 A. I am well-aware of that, yes.

18 Q. And you are not here to tell us that the  
19 doctors who disagree with you are not qualified doctors  
20 to express an opinion.

21 A. I can't tell you that, no.

22 Q. And because, just as you have your opinion  
23 based upon your expertise, they have their opinion based  
24 upon their expertise.

25 A. Absolutely.

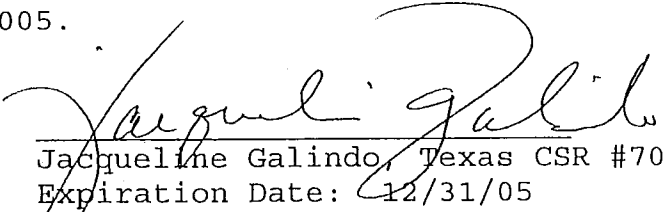
1 THE STATE OF TEXAS X

2 COUNTY OF DALLAS X

3  
4 I, Jacqueline Galindo, Deputy Official  
5 Court Reporter for the Criminal District Court Number  
6 Five, Dallas County, Texas, do hereby certify that the  
7 above and foregoing contains a true and correct  
8 transcription of all portions of evidence and other  
9 proceedings requested in writing by counsel for the  
10 parties to be included in this requested excerpt in the  
11 above styled and numbered cause, all of which occurred in  
12 open court or in chambers and were reported by me.

13 I further certify that this Reporter's  
14 Record of the proceedings truly and correctly reflects  
15 the exhibits, if any, offered by the respective parties.

16 WITNESS MY OFFICIAL HAND, this the 31<sup>st</sup>  
17 day of December, 2005.

18  
19   
Jacqueline Galindo, Texas CSR #7023  
20 Expiration Date: 12/31/05  
Deputy Official Court Reporter  
21 Dallas County, Texas  
Crowley Courts Building  
Dallas, Texas  
22 (817) 996-5433  
23  
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